

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

CrI.MC.No. 2407 of 2007()

-----  
CRIME NO.225/1998 OF C.B.C.I.D. KANNUR  
.....

PETITIONER: ACCUSED  
-----

DR.P.SUBAIR, S/O.MUHAMMED, 66 YEARS,  
SHIFA CLINIC & NURSING HOME,  
RESIDING AT SHIFA MANZIL, MANNA,  
THALIPARAMBA, KANNUR.

BY ADV. SRI.SUNIL NAIR PALAKKAT  
SRI.K.N.ABHILASH

RESPONDENTS: COMPLAINANT/STATE  
-----

THE STATE OF KERALA,  
REP. BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

**R.BASANT, J.**

-----  
Crl.M.C.No.2407 of 2007  
-----

Dated this the 9<sup>th</sup> day of August 2007

**O R D E R**

The petitioner who faces allegations inter alia under Sections 368 and 364A I.P.C was released on bail by the learned Sessions Judge, Thalassery as per Annexure A1 order, subject to conditions. Inter alia a condition was imposed that the petitioner shall surrender his passport before the court below. The petitioner had accordingly surrendered his passport. The investigation is now complete, it is submitted. But the final report has not been filed. The police want some further time to file the final report.

2. In the meantime, the petitioner had got some other conditions imposed on him deleted. But the passport surrendered by him before the learned Magistrate continues to be in the custody of the learned Magistrate. The petitioner applied before the learned Magistrate for return of the said passport. According to him, he wants to proceed to Saudi Arabia to conduct Umra. For the said purpose, he wants his passport back. It is prayed that the passport may be returned to the

petitioner for a specified period so that he can within such time proceed to Saudi Arabia to perform Umra and return to India. Any appropriate conditions may be imposed, submits the learned counsel for the petitioner. The prayer was rejected by the learned Sessions Judge Thalassery by the impugned order which reads “ Report received. Dismissed as no sufficient ground made out for release of passport at this stage”.

3. The learned counsel for the petitioner submits that the learned Sessions Judge has not applied his mind to the question raised. A speaking order has not been passed. The petitioner wants a maximum of only one month's time to be away from India. He needs the passport so that he can apply for visa. Subject to any appropriate conditions, the petitioner may be permitted to proceed to Saudi Arabia to perform Umra and return to India.

4. The learned Public Prosecutor opposes the application on the short ground that the petitioner may not be available if he were permitted to leave India.

5. Having considered all the relevant circumstances, I am satisfied that subject to appropriate conditions, the passport can be released to the petitioner and the petitioner can be

permitted to leave India, proceed to Saudi Arabia to perform Umra and return.

6. In the result, this petition is allowed. The following directions are issued. Passport produced by the petitioner before the learned Magistrate shall be released to the petitioner on the following terms and conditions:

a) He shall execute a bond for Rs.2,00,000/- (Rupees two lakhs only) with two solvent sureties undertaking to produce the passport back before the learned Magistrate within a period of three months from the date on which the passport is released to him.

b) The petitioner shall not leave India without obtaining specific directions of the court. After the petitioner receives the visa, he can report to the learned Magistrate the precise date on which he wants to leave India and seek appropriate directions.

c) He shall undertake to be back in India within a period of one month from the date of his leaving India and surrender the passport before the learned Magistrate within such period.

**(R.BASANT, JUDGE)**

jsr





**R.BASANT, J.**

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007